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PAGE 01 GENEVA 06020 01 OF 02 201833Z

ACTION STR-07

INFO OCT-01 STRE-00 IO-13 AF-10 ARA-10 EA-10 EUR-12

NEA-10 ISO-00 AGRE-00 CEA-01 CIAE-00 COME-00

DODE-00 EB-08 FRB-03 H-01 INR-10 INT-05 L-03

LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15

ITC-01 TRSE-00 ICA-11 SP-02 SOE-02 OMB-01 DOE-15

OIC-02 JUSE-00 /168 W

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P 201642Z APR 78

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TO SECSTATE WASHDC PRIORITY 8668

INFO AMEMBASSY BRUSSELS

AMEMBASSY TOKYO

LIMITED OFFICIAL USE SECTION 01 OF 02 GENEVA 06020

USMTN USEEC

ACTION STR FOR RIVERS, KELLY, GREENWALD

STR PASS CODEL

E.O. 11652 N/A

TAGS: ETRD, MTN

SUBJECT: DISPUTE MANAGEMENT - INFORMAL DC DISCUSSIONS

ON "COMMON APPROACH," APRIL 3-14, 1978

REF: GENEVA 4498

1. INFORMAL DISCUSSIONS AMONG DCS ON GENERAL APPROACH TO DISPUTE MANAGEMENT (NOTIFICATION, CONSULTATIONS, DISPUTE-SETTLEMENT PROCEDURES AND SURVEILLANCE) CONTINUED IN THREE PLURILATERAL SESSIONS APRIL 3, 7, AND 14. IN ADDITION TO MTN DEL DRAFT "UNDERSTANDING" ON SUBJECT (REFTEL), GROUP ALSO CONSIDERED RECENT DRAFTS PRODUCED
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PAGE 02 GENEVA 06020 01 OF 02 201833Z

BY EC COMMISSION AND SWISS DELS (COPIES OF LATTER TWO HANDCARRIED TO WASHINGTON WEEKEND OF APRIL 9-10 BY GREENWALD, STR).

2. AS IN EARLIER SESSIONS (REFTEL), GROUP ACKNOWLEDGED THAT THESE "HORIZONTAL," CROSS-CUTTING DISCUSSIONS NOT LINKED EXPLICITLY TO ANY PARTICULAR MTN GROUP--E.G.,

NTMS, SAFEGUARDS, FRAMEWORK--BUT ALL (INCLUDING EC, FOR FIRST TIME) SUPPORTED DEVELOPMENT OF COMMON APPROACH RE BASIC PRINCIPLES WHICH COULD BE WORKED INTO SPECIFIC PROVISIONS IN VARIOUS SUBJECT-MATTER CODES AND, EVENTUALLY, MORE GENERALIZED RESULT IN CONTEXT OF FRAMEWORK GROUP. U.S. (MARK) REITERATED ARGUMENTS FOR KEY ELEMENTS CONTAINED IN MTN DEL DISCUSSION DRAFT (I.E., STRENGTHENING OF NOTIFICATION/CONSULTATION OBLIGATIONS AND PROCEDURES; ALLOWING FOR RESOLUTION OF DISPUTES AT LESSER LEVELS OF "CONFRONTATION"; MORE EFFECTIVE, CLEARLY-UNDERSTOOD PANEL REVIEW PROCEDURES; SOME FORM OF SURVEILLANCE AND FOLLOW-UP), BUT WELCOMED EC AND SWISS DRAFTS AS ADDITIONAL WORKING BASES AND NOTED APPARENT CONVERGENCE ON OBJECTIVES, IF NOT ON "PRESENTATION" AND DEGREE OF SPECIFICITY. EC (LUYTEN) WAS FAIRLY CONCILIATORY IN PRESENTING COMMISSION DRAFT, WHICH DESIGNED TO FOCUS ON IMPROVEMENTS IN UNWRITTEN, CUSTOMARY PROCEDURES RATHER THAN GENERAL OVERHAUL OF "DELICATE" GATT SYSTEM. SWITZERLAND (EBERHARD) DENIED ITS DRAFT INTENDED TO SUBSTITUTE MECHANICAL DETAIL FOR GOOD FAITH AMONG DISPUTANTS, BUT RATHER TO STRENGTHEN HAND OF THOSE WHO PLAY BY RULES. JAPAN (UKAWA) AND NORDICS (HAGFORS) SIDED GENERALLY WITH "REALISTIC AND PRAGMATIC" EC APPROACH, WHILE CANADA (WEEKES) ARGUED FOR GREATER PRECISION IN SETTLEMENT PROCEDURES SO AS TO AVERT MISUNDERSTANDINGS AND "DE-POLITICIZE" PROCESS. AUSTRALIA (SPENCER) AND LIMITED OFFICIAL USE

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PAGE 03 GENEVA 06020 01 OF 02 201833Z

NEW ZEALAND (GRIEG) VAGUELY SUSPICIOUS OF COLLUSION AMONG MAJOR POWERS.

3. MAIN SUBSTANTIVE POINTS ADDRESSED DURING THREE SESSIONS CONCERNED (A) SWISS REVERSION TO EARLIER (NOW LARGELY DISCARDED) IDEA OF SUBORDINATE OR "MONITORING" BODY TO FILTER CASES PRIOR TO PANEL REVIEW AND ALSO ACCUMULATE EXPERTISE--WITH AUSTRALIA AND CANADA DENYING NEED FOR RESTRICTED GROUP UNDER CODES CURRENTLY BEING NEGOTIATED; (B) "AUTOMATICITY" OF PANEL PROCESS--MOST AGREED COMPLAINANTS HAVE BASIC RIGHT TO PANEL REVIEW BUT ARGUED FOR ENCOURAGING CONSULTATION/CONCILIATION TO WORK FIRST. SWISS SAID A PANEL'S STRONGEST POINT IS THAT IT NEED NOT RELY ON AGREEMENT BETWEEN DISPUTANTS, HENCE SOME "UNPLEASANT AUTOMATICITY" NEEDED; (C) TRANSPARENCY IN MULTILATERAL REVIEW--EC DREW FIRE FROM SMALLER COUNTRIES WITH COMMENT THAT FULL PANEL REPORT COULD BE DISPENSED WITH WHEN PARTIES REACH AGREEMENT DURING COURSE OF REVIEW; (D) NATURE OF PANEL DECISIONS--JAPAN, CANADA AND NORDICS ARGUED THAT "CONSENSUS CONCLUSION" FROM PANEL WOULD CARRY MORE WEIGHT THAN A SPLIT VOTE; AND (E) SWISS-PROPOSED

"EXPERT GROUPS" ON LDC ASPECTS--CANADA SUPPORTED, EC AND NORDICS SAID GATT SECRETARIAT SHOULD CONTINUE TO PERFORM SUCH FUNCTIONS. JAPAN CLOSED BY WONDERING WHETHER PROVISIONS FOR LDC "TECHNICAL ASSISTANCE" WOULD RESULT IN BETTER CASES, OR SIMPLY MORE CASES.

4. DISCUSSIONS TO RESUME WITH EC-HOSTED SESSION APRIL 24, AT WHICH TIME WE EXPECT TO DELIVER MORE DETAILED CRITIQUE OF COMMISSION'S DRAFT ALONG LINES SUGGESTED BY GREENWALD. COMMENT: CURRENT LINEUP AMONG DELS IN THESE TALKS PUTS MTN DEL DRAFT SQUARELY IN CENTER OF SPECTRUM WITH EC AND SWISS PAPERS AT OPPOSITE EXTREMES IN TERMS OF PRECISION AND DETAIL. DEPENDING ON RECEPTION GIVEN OUR COMMENTS AT APRIL 24 SESSION, WE MAY ATTEMPT LIMITED OFFICIAL USE

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PAGE 04 GENEVA 06020 01 OF 02 201833Z

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PAGE 01 GENEVA 06020 02 OF 02 201833Z
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RE-WRITE OF U.S. DRAFT WHICH WOULD FOLD IN MOST ATTRACTIVE (OR LEAST OFFENSIVE) ELEMENTS OF THOSE COUNTER-DRAFTS. END COMMENT.

5. RE LDCS, DC GROUP REMAINS UNDECIDED AS TO WHEN BROADER DISCUSSIONS COULD BEGIN. (FYI. OUR LONG-PLANNED SESSION WITH ELUSIVE KEY LDCS ON MTN DEL DRAFT NOW ANTICIPATED FOR AFTERNOON APRIL 21; WE WOULD HOPE TO BUILD UPON THAT DISCUSSION FOR EVENTUAL DC-LDC PLURILATERAL ON SUBJECT, PERHAPS EARLY IN WEEK OF 1 MAY. END FYI.)

6. DRAFTED BY ADDUCI/MARK MCDONALD
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PAGE 02 GENEVA 06020 02 OF 02 201833Z

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